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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
8 WESTERN DIVISION

9 TYRONE F. SWAIN,  
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11                      Petitioner,

12 v.

13 LARRY SMALL, WARDEN,  
14                      Respondent.

) Case No. CV 08-04186 GAF (AN)

) ORDER APPROVING AND ADOPTING  
) REPORT AND RECOMMENDATION OF  
) UNITED STATES MAGISTRATE JUDGE

15 Pursuant to 28 U.S.C. § 636, the Court has reviewed the file, including the  
16 Magistrate Judge's Report and Recommendation ("R&R") and Petitioner's Objections  
17 thereto, *de novo*. IT IS ORDERED that:

18 1. The Court finds the Objections fail to demonstrate that the findings and  
19 conclusions set forth in the R&R are based upon errors of fact or law. Therefore, the  
20 Objections are overruled and the R&R is approved and adopted.

21 2. Judgment shall be entered denying the Petition and dismissing this action  
22 with prejudice.

23 3. All motions are denied as moot and terminated.

24 IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this  
25 Order and the Judgment on all counsel or parties of record.

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27 Dated: January 9, 2009

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GARY A. FEESS  
UNITED STATES DISTRICT JUDGE